Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States

TIMKEN U.S. CORPORATION AND
TIMKEN NADELLAGER, GMBH,
Petitioners,

v.

UNITED STATES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether, under general principles of administrative law, an administrative agency that is charged with an investigatory duty to collect all the facts that are required for a calculation that is as accurate as possible, may lawfully decline to use corrected information that was offered by the party that provided the original information, when the agency had adequate time to take the information into account and when the corrected information was supported by documentary evidence which exceeded the level of evidence ordinarily required by the agency?

Whether, under general principles of administrative law, an investigative agency's decision *not* to use corrected data may be upheld, if the corrected data was supported by documentary evidence, and the agency's doubts regarding the evidence, if any, could have been addressed by additional information requests, but were not?

Whether the affirmance of the agency's decision by the United States Court of Appeals for the Federal Circuit, which was based on a review of the evidence, is contrary to the principle (sanctioned by this Court) that once the proponent of a fact establishes a prima facie case, supported by credible evidence, the fact must either be rebutted or accepted as true?

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Timken U.S. Corporation and Timken Nadellager, GmbH are wholly-owned subsidiaries of The Timken Company.

The appeal to the United States Court of International Trade was brought by The Torrington Company and Torrington Nadellager, GmbH, at that time wholly-owned subsidiaries of Ingersoll-Rand. On February 18, 2003, The Torrington Company and Torrington Nadellager, GmbH, were acquired by The Timken Company. As a result, The Torrington Company became Timken U.S. Corporation and Torrington Nadellager, GmbH became Timken Nadellager, GmbH.

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ON PETITION FOR A WRIT OF CERTIORARI
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PETITION FOR A WRIT OF CERTIORARI

Timken U.S. Corporation and Timken Nadellager, GmbH (hereinafter referred to as the "Company"), Petitioners, pray that this Honorable Court issue a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Federal Circuit entered in this case on January 10, 2006.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Federal Circuit was entered on January 10, 2006, and is reported as *Timken U.S. Corp. v. United States*, 434 F.3d 1345 (Fed. Cir. 2006), *reh'g*

denied, No. 05-1158 (Fed. Cir. Apr. 12, 2006). Appendix A, *infra*, Pet. App. 1a-27a. The order denying the Petition for Rehearing was entered on April 12, 2006 and is unreported. Appendix B, *infra,* Pet. App. 28a-29a.

The United States Court of International Trade's decision and remand order was entered on March 5, 2004, and is reported as *Timken U.S. Corp. v. United States*, 318 F. Supp. 2d 1271 (Ct. Int'l Trade 2004). Appendix C, *infra*, Pet. App. 30a-52a. The United States Court of International Trade's final affirmance of Commerce's redetermination was entered on October 29, 2004, and is available as *Timken U.S. Corp. v. United States*, 2004 WL 2423732, Slip Op. 04-135 (Ct. Int'l Trade, Oct. 29, 2004), *aff'd* 434 F.3d 1345 (Fed. Cir. 2006). Appendix D, *infra*, Pet. App. 53a-68a.

JURISDICTION

The judgment of the court of appeals was entered on January 10, 2006. Timken's Petition for Rehearing was denied on April 12, 2006. This petition for a *writ of certiorari* is filed within ninety days of the date that the Petition for Rehearing was denied. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

The following statutory provisions are involved: Sections 516A(a), 516A(b), 731, 751(a)(1), 751(a)(3), 751(d)(1), 751(e), 771(1), 771(35)(A), 774(b), and 782(d) of the Tariff Act of 1930, as

amended, codified at 19 U.S.C. §§ 1516a(a), 1516a(b), 1673, 1675(a)(1), 1675(a)(3), 1675(d)(1), 1675(e), 1677(1), 1677(35)(A), 1677c(b), and 1677m(d). Appendix E, *infra*, Pet. App. 69a-81a.

The following regulations are involved: 19 C.F.R. §§ 351.106(c), 213(h)(1), 221(b)(2), 221(b)(4), 221(b)(5), 222(b)(2), 222(e)(1), 301(a), 301(c)(2), 303(g), 309(c)(2), and 310. Appendix F, *infra*, Pet. App. 82a-93a.

STATEMENT OF THE CASE

The United States Court of International Trade possessed jurisdiction under 28 U.S.C. § 1581(c). The United States Court of Appeals for the Federal Circuit possessed jurisdiction under 28 U.S.C. § 1295(a)(5) (creating jurisdiction to review decisions of the United States Court of International Trade).

A. Statutory and Regulatory Background

The United States Department of Commerce ("Commerce") is entrusted with the enforcement of the antidumping law. 19 U.S.C. § 1677(1). The antidumping law requires Commerce to impose a duty on a class or kind of foreign merchandise whenever such merchandise is being sold in the United States at less than its fair value and the United States International Trade Commission determines that an industry in the United States is being injured by reason of imports of that merchandise. 19 U.S.C. § 1673. The duty is equal to the amount by which the normal value exceeds the export price or constructed

export price for the merchandise, referred to as the dumping margin. 19 U.S.C. §§ 1673, 1677(35)(A).

The amount of the duty is subject to annual review by Commerce, if Commerce receives a request for such a review. 19 U.S.C. § 1675(a)(1). If Commerce finds *de minimis* dumping margins with respect to a particular exporter in three consecutive years, then Commerce may determine to revoke the antidumping order with respect to that exporter. 19 U.S.C. § 1675(d)(1); 19 C.F.R. § 351.222(b)(2).

Commerce reports that as of May 3, 2006, there were 318 antidumping duty and countervailing duty orders in place, covering a variety of products from forty different countries. Commerce also reports that between 1980 and 2003, it completed over 1,600 antidumping annual reviews.

B. Statement of Facts

The Company produced cylindrical roller bearings in Germany, primarily for sale in Germany. A small portion of its production, however, was exported to the United States. In two prior annual review periods, Commerce had found *de minimis* dumping margins (*i.e.*, below 0.5 percent) with regard to these exports. 19 C.F.R. § 351.106(c).

On the basis of these prior determinations, and in the expectation that Commerce would again find a *de minimis* margin, the Company asked Commerce to review its exports of cylindrical roller bearings imported into the United States between May 1, 1998 and April 30, 1999. The Company in-

cluded a request that Commerce revoke the antidumping order with respect to the Company's exports of cylindrical roller bearings from Germany. 19 C.F.R. § 351.222(e)(1).

Commerce, in due course, initiated such an annual review, and, upon initiation, forwarded a detailed questionnaire to the Company, asking it to supply information concerning its sales in Germany and in the United States (as it had done in prior annual reviews). 19 C.F.R. §§ 351.221(b)(2), 301(a), 301(c)(2).

The Company timely supplied the requested data. The data consisted, *inter alia*, of several electronic databases containing transaction-by-transaction accountings of the Company's sales in the United States and in Germany in the time periods sampled by Commerce. For each reported sales transaction, the electronic data included, *inter alia*, the quantity sold, the price, the identity of the customer, a specific identification of the product sold (in this case the bearing model number), and, of particular relevance in this case, an identification of the "channel of distribution" in which the reported sale took place. The identification of the channel of distribution distinguished, *inter alia*, "large OEM [original equipment manufacturer] sales," "small OEM sales," and "aftermarket sales." Responding to an additional information request, the Company also supplied an electronic database containing cost of production data for each of the models included in its home market sales response.